

Congress of the United States
House of Representatives
Washington, DC 20515

June 27, 2012

The Honorable Ambassador Ron Kirk
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Kirk:

We write with regard to the ongoing negotiations over a potential Trans-Pacific Partnership (TPP) Free Trade Agreement (FTA), an agreement that continues to grow in scope. Specifically, we write to urge you and your staff to engage in broader and deeper consultations with members of the full range of committees of Congress whose jurisdiction touches on the wide-ranging issues involved, and to ensure there is ample opportunity for Congress to have input on critical policies that will have broad ramifications for years to come.

As the President noted in his remarks at the November Asia-Pacific Economic Cooperation (APEC) summit, those involved in the TPP FTA negotiations are seeking “a high-level trade agreement that could potentially be a model, not just for countries in the Pacific region, but for the world generally.” In doing so, this pact would establish rules that extend far beyond traditional trade matters to include “a whole range of new trade issues that are going to be coming up in the future - innovation, regulatory convergence, how we’re thinking about the Internet and intellectual property.”

The TPP FTA represents an opportunity to create a new, sustainable model that respects domestic policy choices and promotes economic development with shared prosperity. Unfortunately, reports indicate the agreement is likely to repeat, rather than improve upon, the existing trade template—including the weakening of Buy America provisions, providing extraordinary investor-state privileges, and restricting access to lifesaving medicines in developing nations, to name a few.

Since the United States will be obliged to bring existing and future U.S. policies into compliance with the norms established in the TPP FTA, the negotiations USTR is pursuing will create binding policies on future Congresses in numerous areas. These could include those related to labor, patent and copyright, land use, food, agriculture and product standards, natural resources, the environment, professional licensing, state-owned enterprises and government procurement policies, as well as financial, healthcare, energy, telecommunications and other service sector regulations.

As you know, past U.S. trade negotiations conducted under the now-expired Bipartisan Trade Promotion Authority Act of 2002 (P.L. 107-210), also known as “Fast Track,” required various stages of congressional consultations before and during negotiations as a condition of Congress’ delegation of its exclusive constitutional authority “to regulate commerce with foreign nations.” The Fast Track law also required the Administration to consult with “all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations” and mandated the creation of a Congressional Oversight Group of these committees with “access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials.”¹

Such consultations are essential because the TPP FTA negotiations are of unprecedented scope due to the number of countries and issues involved. According to USTR statements, the TPP membership could ultimately include half of the nations of the world. Accordingly, the proposed TPP FTA necessitates extreme care at the front end, which includes input from Members of Congress serving on committees whose jurisdiction is directly implicated by the broad array of trade and non-trade policies being negotiated. We are troubled that important policy decisions are being made without full input from Congress.

Under the trade advisory system, representatives from over 600 business interests have such access to both USTR negotiators and the negotiating text. However, American small business, civil society, and other interests who have a direct and long-term interest in the outcome of these negotiations have little meaningful input. In the past, most important U.S. trade agreement texts have not been made available until after they were signed and changes were all but impossible. If Congress and the public are not informed of the exact terms of the agreement until the conclusion of the process, then any opportunity for meaningful input is lost.

Given the laudable priority given to improved government transparency since the first day of the Obama administration, we are troubled that there may be needless secrecy and over-classification of documents associated with the release of drafts of the pact’s various chapters, or even providing a summary of each of the administration’s policies that they have proposed to other countries. Press reports and a recent USTR letter indicate that the negotiating parties signed a confidentiality agreement in 2010 imposing heightened secrecy for the process. Accordingly, we ask that you provide us with a copy of the confidentiality agreement and an explanation as to what role USTR or other governments played in crafting it.

Fortunately, there is precedent for greater openness which could bring needed daylight to this process. For example:

- a full draft text of the Free Trade Area of the Americas (FTAA) was released in 2001 during negotiations on that 34-nation pact;
- the World Trade Organization now posts composite negotiating texts on its website, including various texts during the Doha round negotiations; and

¹ See 19 USC § 3807

- a draft text of the recently-completed Anti-Counterfeiting Trade Agreement (ACTA) was released.





We would urge you to adopt a similar approach in the context of TPP FTA talks, especially now that there are draft texts with bracketed provisions for most chapters of the prospective pact. To the extent that secrecy provisions in the MOU preclude the unilateral release of negotiating text, then we would urge you to work with our TPP negotiating partners to obtain their consent to do so and inform us if there are countries that are unwilling to cooperate.

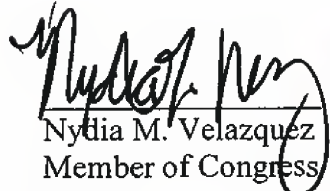
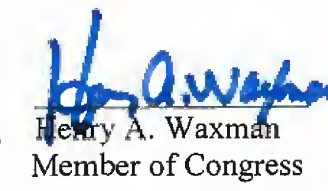
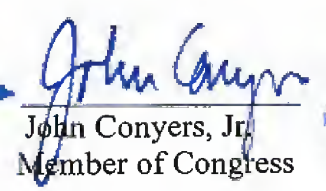
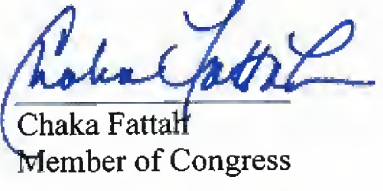
With regard to U.S. proposals, we request that you provide us and the public with summaries of the proposals offered by the U.S. government, so we have a clearer idea of what positions are being advanced on behalf of the U.S. citizenry. Full U.S. proposal texts should be made available not only to Members of Congress, but also to their staffs. To the extent that classification of documents is required, then we would urge you to make them available to all staff with appropriate security clearances.

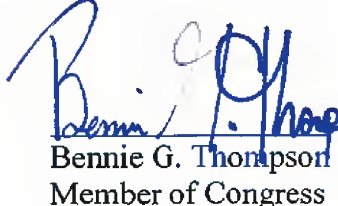

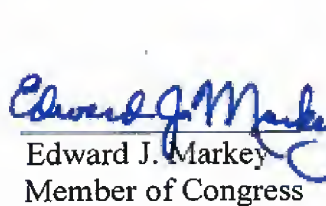

We share your goal of making any TPP FTA a high-level agreement that serves as a model for the world. We believe reaching that standard requires transparency and sustained, ongoing consultations with the many impacted congressional committees and the public. We look forward to working with your administration to ensure we meet our shared goals.

Thank you for your consideration.

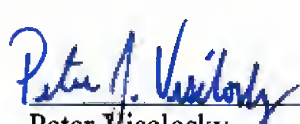

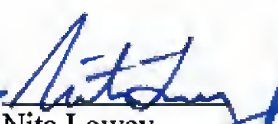

Sincerely,

			
Rosa L. DeLauro Member of Congress	George Miller Member of Congress	Barney Frank Member of Congress	Jose Serrano Member of Congress





			
Nydia M. Velazquez Member of Congress	Henry A. Waxman Member of Congress	John Conyers, Jr. Member of Congress	Chaka Fattah Member of Congress

			
Bennie G. Thompson Member of Congress	David E. Price Member of Congress	Edward J. Markey Member of Congress	Nick T. Rahall, II Member of Congress





 John Olver Member of Congress	 Collin C. Peterson Member of Congress	 Sam Farr Member of Congress	 Elijah E. Cummings Member of Congress
---	---	--	---

 Peter Visclosky Member of Congress	 C.A. Dutch Ruppersberger Member of Congress	 Nita Lowey Member of Congress	 Bob Filner Member of Congress
--	---	--	---



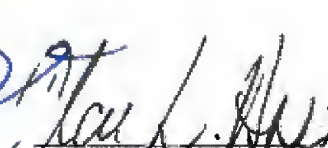

 Sanford D. Bishop, Jr. Member of Congress	 Michael M. Honda Member of Congress	 Louise M. Slaughter Member of Congress	 Chris Van Hollen Member of Congress
---	---	---	---

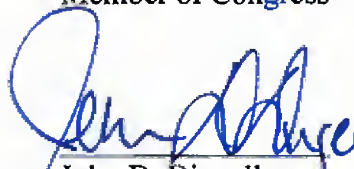
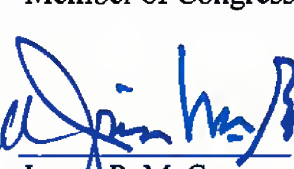
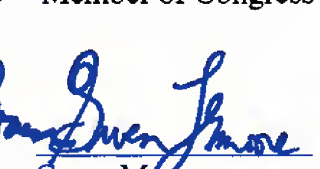
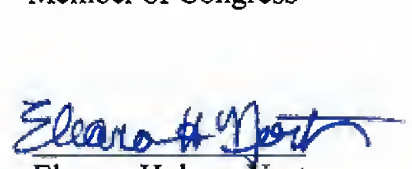
 Robert A. Brady Member of Congress	 Linda T. Sanchez Member of Congress	 Jesse L. Jackson, Jr. Member of Congress	 Peter A. DeFazio Member of Congress
--	---	---	---

 William R. Keating Member of Congress	 Maurice D. Hinchey Member of Congress	 Marcy Kaptur Member of Congress	 Earl Blumenauer Member of Congress
---	---	--	--





 Keith Ellison Member of Congress	 Wm. Lacy Clay Member of Congress	 Tim Ryan Member of Congress	 Laura Richardson Member of Congress
--	--	--	---

 Raul M. Grijalva Member of Congress	 Mark S. Critz Member of Congress	 Betty Sutton Member of Congress	 Dennis J. Kucinich Member of Congress
---	--	--	---





 Zoe Lofgren Member of Congress	 Tim Holden Member of Congress	 Cedric L. Richmond Member of Congress	 Alcee L. Hastings Member of Congress
---	---	--	---

 John D. Dingell Member of Congress	 James P. McGovern Member of Congress	 Gwen Moore Member of Congress	 Eleanor Holmes Norton Member of Congress
--	--	--	--

 Paul D. Tonko Member of Congress	 Suzanne Bonamici Member of Congress	 John P. Sarbanes Member of Congress	 Lois Capps Member of Congress
--	---	--	---


 Betty McCollum Member of Congress	 Emanuel Cleaver Member of Congress	 John F. Tierney Member of Congress	 Bruce A. Loefer Member of Congress
---	--	---	--

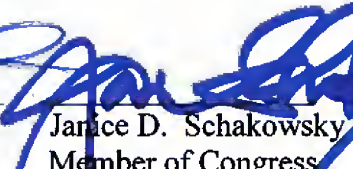
 John A. Yarmuth Member of Congress	 Brian Higgins Member of Congress	 Peter Welch Member of Congress	 Chellie Pingree Member of Congress
---	---	--	---

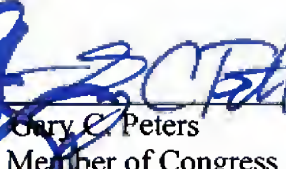
 Steve Cohen Member of Congress	 Luis V. Gutierrez Member of Congress	 Michael H. Michaud Member of Congress	 Donna F. Edwards Member of Congress
--	--	--	---


 Mazie K. Hirono Member of Congress	 Michael E. Caputo Member of Congress	 Hansen Clarke Member of Congress	 Joe Baca Member of Congress
--	--	---	---

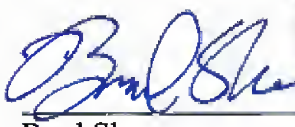
 Daniel Lipinski Member of Congress	 Rush D. Holt Member of Congress	 David N. Cicilline Member of Congress	 David Loebsack Member of Congress
--	---	--	---



Martin Heinrich
Member of Congress

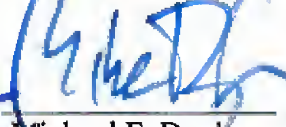

Janice D. Schakowsky
Member of Congress

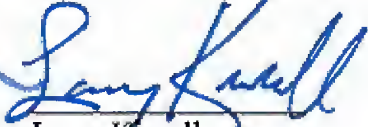

Gary C. Peters
Member of Congress

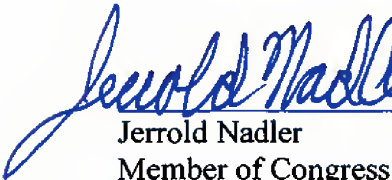

Kurt Schrader
Member of Congress



Brad Sherman
Member of Congress

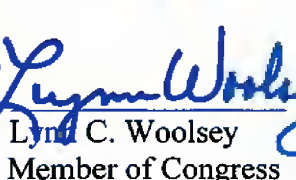

Russ Carnahan
Member of Congress

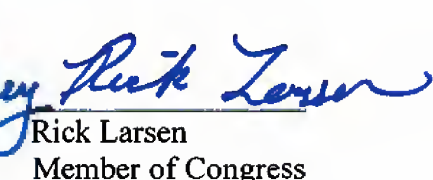

Michael F. Doyle
Member of Congress

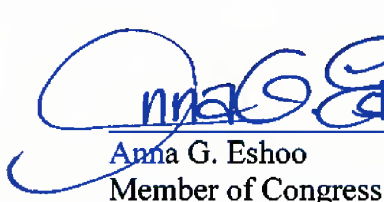

Larry Kissell
Member of Congress



Jerrold Nadler
Member of Congress


Brad Miller
Member of Congress

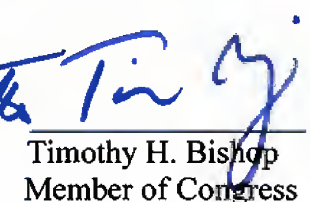

Lynn C. Woolsey
Member of Congress

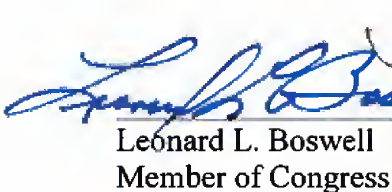

Rick Larsen
Member of Congress

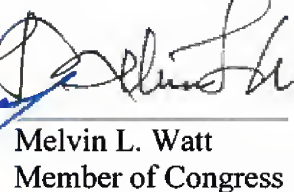

Anna G. Eshoo
Member of Congress


Fortney Pete Stark
Member of Congress



Jerry Costello
Member of Congress



Timothy H. Bishop
Member of Congress



Leonard L. Boswell
Member of Congress



Melvin L. Watt
Member of Congress



John Garamendi
Member of Congress



Frank Pallone, Jr.
Member of Congress


Dale E. Kildee
Member of Congress



Bill Pascrell, Jr.
Member of Congress


Colleen Hanabusa
Member of Congress



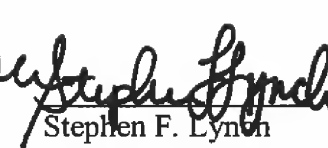


Mike Quigley
Member of Congress


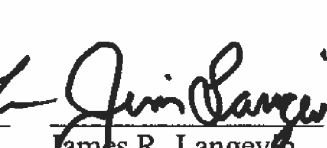
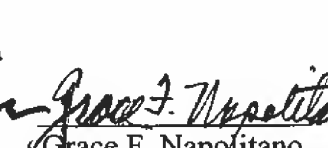
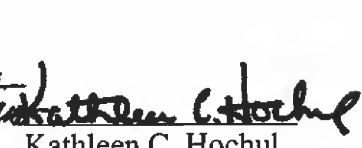

Corrine Brown
Member of Congress




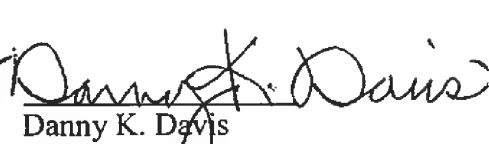

Lucille Roybal-Allard
Member of Congress



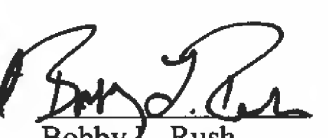


Joe Courtney
Member of Congress

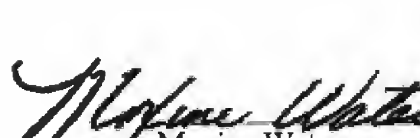

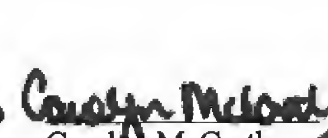


Al Green
Member of Congress



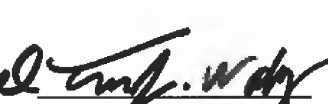

 Lloyd Doggett Member of Congress	 Judy Chu Member of Congress	 Stephen F. Lynch Member of Congress	 Gene Green Member of Congress
--	--	---	--




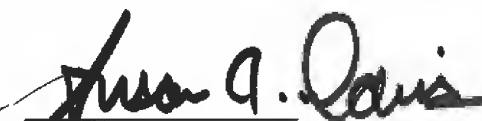
 Sheila Jackson-Lee Member of Congress	 James R. Langevin Member of Congress	 Grace F. Napolitano Member of Congress	 Kathleen C. Hochul Member of Congress
--	--	---	---



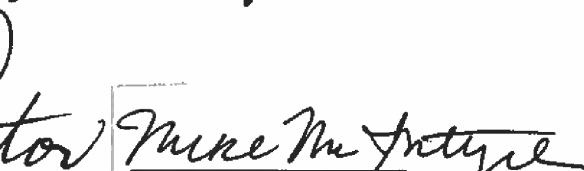
 G. K. Butterfield Member of Congress	 Christopher S. Murphy Member of Congress	 David Scott Member of Congress	 Danny K. Davis Member of Congress
--	--	---	---

 Janice Hahn Member of Congress	 Terri A. Sewell Member of Congress	 Bobby L. Rush Member of Congress	 Barbara Lee Member of Congress
---	--	---	--

 Maxine Waters Member of Congress	 Niki Tsongas Member of Congress	 Carolyn McCarthy Member of Congress	 Albio Sires Member of Congress
--	--	---	---

 André Carson Member of Congress	 Eliot L. Engel Member of Congress	 Timothy J. Walz Member of Congress	 Marcia L. Fudge Member of Congress
---	---	---	--

 Yvette D. Clarke Member of Congress	 Tammy Baldwin Member of Congress	 Jerry McNerney Member of Congress	 Susan A. Davis Member of Congress
---	--	--	---

 Joe Donnelly Member of Congress	 Ed Pastor Member of Congress	 Mike McIntyre Member of Congress
---	--	---



Robert C. Scott
Member of Congress